

SENATE BILL

No. 40

Introduced by Senator Kehoe

February 10, 2010

An act to add Sections 8587.3 and 8587.4 to the Government Code, and to add Section 16031 to the Insurance Code, relating to emergency services, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 40, as introduced, Kehoe. Emergency services: property insurance surcharge.

(1) Existing law establishes the California Emergency Management Agency, which is responsible for the state's emergency and disaster response services for certain manmade disasters and emergencies, including responsibility for activities necessary to prevent, respond to, recover from, and mitigate the effects of emergencies and disasters to people and property.

This bill would establish the Local Government Mutual Aid Enhancement Program in the agency, and would require funds, as specified, deposited in the Emergency Response Fund, to be allocated to the program upon appropriation by the Legislature. This bill would require the Secretary of California Emergency Management to allocate funds to specified entities, for the purpose of enhancing or sustaining fire and rescue disaster mutual aid capacity to combat the effect of all hazard disasters, as provided. This bill would also require the secretary, in consultation with specified entities, to develop a strategy, as provided, for the enhancement of mutual aid, and would require each fire and rescue operational area to submit a 3-year strategy for the enhancement of fire and rescue disaster mutual aid, as specified, to the secretary.

(2) Existing law provides that the Insurance Commissioner, in cooperation with insurers, the Office of Emergency Services, and other emergency service agencies, shall establish procedures for the coordination of efforts between insurers and their representatives and those of emergency response agencies.

This bill would create the Emergency Response Fund in the State Treasury. Insureds would be required to pay a special purpose surcharge on commercial and residential fire and multiperil insurance policies, including policies with combined property and liability coverage, issued or renewed on or after July 1, 2010, as specified. Funds from this surcharge would be available for appropriation by the Legislature to fund emergency activities, as defined, of the California Emergency Management Agency, the Department of Forestry and Fire Protection, and the Military Department. Any balance remaining in the fund at the end of a fiscal year would be retained and carried forward to the next fiscal year. This bill would require insurers collecting the surcharge to make a specified disclosure on the policy declarations page, billing statement, or a separate document accompanying the declarations page or billing statement. This bill would also require the Department of Insurance, the Department of Forestry and Fire Protection, and other state agencies and departments to cooperate and provide information to the California Emergency Management Agency as necessary to implement this act.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8587.3 is added to the Government Code,
2 to read:

1 8587.3. (a) There is established in the California Emergency
2 Management Agency the Local Government Mutual Aid
3 Enhancement Program.

4 (b) (1) On July 1, 2011, and each year thereafter, upon
5 appropriation by the Legislature, the program shall be allocated
6 31.3 percent of the funds deposited in the Emergency Response
7 Fund created pursuant to Section 16031 of the Insurance Code,
8 for the purposes specified in this section.

9 (2) The Secretary of California Emergency Management shall
10 allocate the funds specified in paragraph (1) to entities within an
11 operational area as specified in Section 8605, and that are
12 participants in the Master Mutual Aid Agreement as defined by
13 Section 8561. The funds shall be allocated to entities based upon
14 both of the following:

15 (A) A pro rata share of fees collected for the Emergency
16 Response Fund created pursuant to Section 16031 of the Insurance
17 Code within that operational area.

18 (B) The population served by each local fire agency or special
19 district that provides fire protection within that operational area.

20 (3) On an annual basis, any funds that are not allocated and are
21 not scheduled to be allocated from the Emergency Response Fund
22 created pursuant to Section 16031 of the Insurance Code for the
23 support of state expenditures, shall, upon appropriation by the
24 Legislature, be allocated to the program for the purposes specified
25 in this section, and shall be allocated by the secretary pursuant to
26 paragraph (2).

27 (c) Entities that receive an allocation pursuant to subdivision
28 (b) shall use the funds to enhance or sustain fire and rescue disaster
29 mutual aid capacity to combat the effect of all hazard disasters in
30 any of the following areas:

31 (1) Disaster response capacity.

32 (2) Communications interoperability that comply with Section
33 8592.5.

34 (3) Household and individual preparedness outreach and
35 education.

36 (4) Programs to immediately reduce community vulnerability
37 to hazards identified in their approved hazard mitigation plan
38 pursuant to Section 65302.6.

39 (d) Entities that receive an allocation pursuant to subdivision

40 (b) may use the funds to support personnel, training, exercises,

1 equipment, construction, and other activities that enhance or sustain
2 disaster mutual aid capacity, or reduce community vulnerability
3 to disasters.

4 (e) For purposes of promoting the implementation and
5 functioning of the program, upon appropriation by the Legislature,
6 the secretary may allocate funds to reimburse agencies and special
7 districts that provide staff support for operational area or regional
8 fire and rescue coordination.

9 (f) Funds allocated to entities pursuant to this section shall not
10 be used to supplant any existing funds allocated to that entity by
11 the California Emergency Management Agency for fire and rescue
12 services.

13 SEC. 2. Section 8587.4 is added to the Government Code, to
14 read:

15 8587.4. (a) Beginning on July 1, 2011, and on July 1 every
16 three years thereafter, the Secretary of California Emergency
17 Management, in consultation with the Department of Forestry and
18 Fire Protection, FIRESCOPE, and any other necessary groups
19 representing firefighters, fire chiefs, and special fire districts
20 throughout the state, shall develop a strategy for enhancement of
21 mutual aid. The strategy shall do all of the following:

22 (1) Identify eligible purchases, activities, and programs that
23 promote the delivery of mutual aid.

24 (2) Set goals for mutual aid enhancement.

25 (3) Identify criteria for allocations of resources for mutual aid.

26 (4) Prescribe the fiscal and administrative oversight of the Local
27 Government Mutual Aid Enhancement Program established
28 pursuant to Section 8587.3.

29 (b) On a date identified by the Secretary of California
30 Emergency Management, each fire and rescue operational area
31 shall submit a three-year strategy, to the secretary, for the
32 enhancement of fire and rescue disaster mutual aid. The plan shall
33 satisfy the requirements specified in subdivision (a) and shall
34 specify how fire entities within the operational area will use the
35 funds over the next three years.

36 SEC. 3. Section 16031 is added to the Insurance Code, to read:

37 16031. (a) The Emergency Response Fund is hereby created
38 in the State Treasury. Funds received by the California Emergency
39 Management Agency pursuant to this section shall be deposited
40 into this fund. Funds deposited into this fund may be appropriated

1 by the Legislature for the purposes of this section to fund the
2 emergency activities of the California Emergency Management
3 Agency, the Department of Forestry and Fire Protection, and the
4 Military Department.

5 (b) Insureds shall pay a special purpose surcharge on each
6 commercial and residential fire and multiperil insurance policy
7 issued or renewed on or after July 1, 2010, equivalent to 4.8 percent
8 of the premium written on residential fire and multiperil insurance
9 or the property exposure for commercial policies in California.
10 The surcharge shall only be applied to new business and renewal
11 transactions. No adjustment shall be made for midterm increases
12 or decreases in exposure or coverage. The amount of the surcharge
13 shall be calculated to the nearest dollar. Notwithstanding any other
14 provision of law, failure to collect the surcharge from insureds
15 prior to January 1, 2011, shall not result in a penalty, fine, or other
16 liability.

17 (c) Every admitted insurer in this state shall collect the
18 emergency response surcharge specified in subdivision (b), which
19 shall be separately identified on each policy, with respect to
20 residential fire and multiperil insurance and the property portion
21 of commercial policies.

22 (d) For those policies on which the surplus line tax is paid by a
23 surplus line broker pursuant to Sections 1775.1 to 1775.5, inclusive,
24 the surplus line broker shall collect the emergency response
25 surcharge with respect to the property portion of any homeowners
26 policy, all risk insurance policy, or named peril insurance policy
27 that specifically includes fire coverage placed with a nonadmitted
28 insurer. Where those policies cover multistate risks, the surcharge
29 shall be applied pro rata to that portion of the premium allocated
30 to risks in this state based on the percentage of the property risk
31 located in California.

32 (e) (1) Funds received as a result of the surcharge imposed on
33 insureds as a percentage of premiums written on residential fire
34 and multiperil insurance and property exposures for commercial
35 insurance policies shall be remitted by the admitted insurers to the
36 California Emergency Management Agency, or other state agency
37 designated to collect the surcharge on behalf of the California
38 Emergency Management Agency, within 45 days following the
39 end of each calendar quarter. The premiums written by admitted
40 insurers for property exposures shall be as stated on lines 1, 4, and

1 5.1 of the annual statement filed by each insurer pursuant to Section
2 900.

3 (2) Funds received as a result of the surcharge imposed on
4 insureds as a percentage of premiums written on property exposures
5 for both commercial and residential insurance policies placed with
6 a nonadmitted insurer shall be remitted by the surplus line brokers
7 to the Surplus Line Association in the same manner and form as
8 the stamping fee paid on the policies placed with a nonadmitted
9 insurer by a surplus line broker. The Surplus Line Association
10 shall remit the funds received from surplus line brokers to the
11 California Emergency Management Agency, or its designee, within
12 45 days following the end of each calendar quarter.

13 (f) None of the special purpose surcharges shall be considered
14 premiums for any purpose, including the computation of gross
15 premium tax or agent's commission. The full amount of the
16 surcharge is due at inception or renewal of the insurance policy,
17 even if the premium is paid in installments. The amount of each
18 special purpose surcharge shall be separately stated on either a
19 billing or policy declaration sent to an insured. Notwithstanding
20 this subdivision, an admitted insurer or surplus line broker may
21 omit collecting of the surcharge from its insured if the expense of
22 collecting the surcharge would exceed the amount of the surcharge
23 and instead remit the amount of omitted surcharges to the
24 California Emergency Management Agency or its designee,
25 provided that nothing in this subdivision shall relieve the admitted
26 insurer or surplus line broker of its obligation to recoup the amount
27 of the surcharge otherwise collectible.

28 (g) (1) For commercial policies with combined property and
29 liability coverage, for which the actual property coverage cannot
30 be determined, the admitted insurer shall calculate, and the insured
31 shall remit, the surcharge based upon the ratio of 50 percent
32 attributable to the property coverage. Within 45 days following
33 submission of its annual statement to the National Association of
34 Insurance Commissioners, an admitted insurer shall reconcile its
35 lines 1, 4, and 5.1 surcharge remittances based upon its annual
36 statement.

37 (2) For policies for which a surplus line tax is paid by a surplus
38 line broker pursuant to Sections 1775.1 to 1775.5, inclusive, for
39 risks with combined property and liability coverage, the surplus

1 line broker shall calculate and the insured shall remit the surcharge
2 based on a ratio of 50 percent attributable to the property coverage.

3 (h) Each admitted insurer and surplus line broker collecting the
4 surcharge shall be required to disclose the surcharge as the
5 “California Emergency Response Safety Surcharge” on the
6 declarations page, the billing statement, or a separate document
7 accompanying the declarations page or billing statement. If an
8 insurer chooses to provide supplemental materials to policyholders
9 describing the surcharge, the language shall comply substantially
10 with the following:

11
12 “The State of California has imposed an Emergency Response
13 Safety Surcharge on all residential and commercial insurance
14 policies issued or renewed on or after July 1, 2010. The purpose
15 of this surcharge is to ensure adequate funding of emergency
16 response services throughout California. We are required by law
17 to collect the surcharge from our policyholders. The surcharge,
18 which is separately stated on your declarations page or billing
19 statement, is calculated at 4.8 percent of the applicable policy
20 premium.”

21
22 (i) Failure of an insured to pay the surcharge shall be treated as
23 a failure to pay the premium. Failure to pay the surcharge shall
24 result in the cancellation of the policy.

25 (j) If a policy is canceled before the end of the term for which
26 it was issued or the end of the period for which a premium has
27 been paid, the surcharge amount shall not be refunded. However,
28 any assessable policy of insurance that is canceled as of the
29 effective date of the policy, if all of the premium is returned to the
30 insured, and no coverage was ever provided to the insured, shall
31 not be subject to a surcharge. All refunds of previously collected
32 surcharges on those canceled policies shall be applied to reduce
33 the surcharges reported in the same calendar quarter in which the
34 refunded surcharges were made.

35 (k) Funds in the Emergency Response Fund shall be distributed,
36 upon appropriation, to the California Emergency Management
37 Agency, the Department of Forestry and Fire Protection, and the
38 Military Department for the support of the emergency response
39 activities of those departments, and to the California Emergency
40 Management Agency or its designee for the actual administrative

1 costs incurred in collecting the surcharge pursuant to this section,
2 and for the maintenance of an adequate reserve.

3 (l) Any balance remaining in the Emergency Response Fund at
4 the end of each fiscal year shall be retained in the fund and carried
5 forward to the next fiscal year.

6 (m) The Department of Insurance, the Department of Forestry
7 and Fire Protection, and other state agencies and departments shall
8 cooperate and provide information to the California Emergency
9 Management Agency as necessary to implement this program.

10 (n) For the purposes of this section, the following definitions
11 apply:

12 (1) “Admitted insurer” means an insurer that has secured a
13 certificate of authority from the commissioner as required by
14 Section 700 and is subject to the tax set forth in Section 28 of
15 Article XIII of the California Constitution.

16 (2) “Hazard” means the potential impact to people or property
17 as a result of seismic activity, flood, or wild land fire.

18 (3) “Surplus line broker” means a person licensed pursuant to
19 Section 1765.2.

20 (o) For purposes of this section, “FAIR Plan” established
21 pursuant to Chapter 9 (commencing with Section 10090) of Part
22 1 of Division 2, is an admitted insurer.

23 SEC. 4. This act addresses the fiscal emergency declared by
24 the Governor by proclamation on January 8, 2010, pursuant to
25 subdivision (f) of Section 10 of Article IV of the California
26 Constitution.

27 SEC. 5. This act is an urgency statute necessary for the
28 immediate preservation of the public peace, health, or safety within
29 the meaning of Article IV of the Constitution and shall go into
30 immediate effect. The facts constituting the necessity are:

31 In order to make necessary statutory changes to improve the
32 state’s ability to respond to potentially devastating and deadly
33 emergencies at the earliest time possible, it is necessary that this
34 act take effect immediately.

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